IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

Writ Petition No. 2403 of 2005

Shri Rambhau Punjaji Jadhav ..Petitioner

vs.

1. Shri Ramnath Laxman Jadhav
and others ..Respondents

Shri S.S.Kulkarni for petitioner

CORAM: S.B.MHASE J.
4th April, 2006

P.C.

1. Heard the learned Counsel for petitioner.

2. The order dated 15th January, 2005 passed by the II Joint Civil Judge, Jr.Dn., Nashik below Exh.173 in Reg.Civil Suit No.563 of 1995 is under challenge. The original defendant no.5 died during the pendency of the above referred suit. The application to bring on record the heirs of deceased defendant no.5 was taken out. Along with the said application, an application for condonation of delay and setting aside abatement was also taken out. Those applications were rejected and the matter came to this Court and also reached upto the Apex Court. Ultimately those proceedings under Order XXII terminated as against the present petitioners/plaintiffs and thereafter the suit abated as against defendant no.5. Thereafter application Exh.173 was moved under Order I Rule 10 read with sec.151 for adding the parties to the said suit which are the heirs of deceased defendant no.1.

That application was rejected and, therefore, the present petition. The learned Counsel for the petitioners submitted that the property of defendant n.5 had devolved upon the proposed defendants and they are obstructing the present plaintiffs/petitioners and therefore, there is a fresh cause of action to add them as parties to the suit. The submission is devoid of any merit as has been analysed by the Trial Court. The application under Order I Rule 10 has been given to circumvent the orders passed by this Court and the Apex Court in the proceedings under Order XXII and, therefore, no interference is called for. Petition is rejected.

(S.B.MHASE J.)